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GACarver, Jr.
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80OCT 80 Oct 71

SECRETARIAT DISSEMINATION

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SAIGON

1. REF IS HELPFUL INPUT TO DISCUSSION OF ASSASSINATION CONTINGENCIES WE HAVE BEEN CONDUCTING HERE FOR SOME TIME IN VARIOUS FORUMS INCLUDING SULLIVAN COMMITTEE. WE ARE OF COURSE NOT VIETNAMESE LAWYERS OR VIETNAMESE POLITICIANS. IF ASSASSINATION SITUATION SHOULD ARISE, VIETNAMESE WILL BE PRESENTED WITH IMMEDIATE AND SERIOUS PROBLEM THEY WILL DOUBTLESS RESOLVE IN THEIR OWN WAY. NONETHELESS, SINCE SUCH A SITUATION WOULD PROBABLY ARISE SUDDENLY AND UNEXPECTEDLY, CAREFUL REVIEW OF OPTIONS BEFORE THE EVENT IS MOST DESIRABLE. IF EVENT EVER OCCURRED, DECISIONS MIGHT HAVE TO BE MADE WITH A SPEED THAT PRECLUDED CONSIDERED JUDGMENT.

2. WE SHARE YOUR VIEWS ON LEGAL OPTIONS OPEN IF THIEU ASSASSINATED AFTER 31 OCTOBER, WHEN CURRENT TERM EXPIRES. OUR READING OF THE CONSTITUTION, HOWEVER, LEADS TO CONCLUSIONS

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SLIGHTLY DIFFERENT FROM YOURS WITH RESPECT TO LEGAL OPTIONS
OPEN IF THIEU SHOULD BE ASSASSINATED BEFORE 31 OCTOBER AND KY
DID NOT WANT TO RESIGN IN FAVOR OF SENATE PRESIDENT HUYEN.

3. TO OUR EYES, ARTICLE 64 OFFERS LITTLE NOURISHMENT
IN SUCH A SITUATION. THE PRESIDENT'S TERM OF OFFICE, HENCE HIS
TEMPORAL SPAN OF AUTHORITY, IS QUITE PRECISELY DEFINED IN
ARTICLE 52. THIEU'S CURRENT TERM ENDS AT NOON ON 31 OCTOBER. IN
A PRE-31 OCTOBER ASSASSINATION CONTINGENCY, KY WOULD BE FILLING
THE BALANCE OF THIEU'S UNEXPIRED TERM, HENCE HIS AUTHORITY AS
ACTING PRESIDENT WOULD ALSO EXPIRE AT NOON ON 31 OCTOBER. TO
~~OUR EYES,~~ ARTICLE ~~XX~~ 64 MAKES NO EXPRESS OR IMPLICIT REFERENCE
~~TOXTERMXTOXTERMXTOXTERMXTOXTERMXTOXTERMX~~ TO TERMS OF OFFICE. IT MIGHT BE
USED TO ANNUL THE 3 OCTOBER ELECTION BUT WE DO NOT SEE HOW IT
COULD BE CONSTRUED TO SUPERSEDE OR SUPPLANT ARTICLE 52 TO
EXTEND KY'S TENURE AS ACTING ~~XX~~ PRESIDENT. ANYTHING
CAN BE ACHIEVED BY AMENDMENT OR COURSE, BUT YOU ~~XX~~ DESCRIBE

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VERY WELL THE CUMBERSOME COMPLEXITY OF THE PROCEDURES OUTLINED IN ARTICLES 103 THROUGH 106, WHICH ARE ILL ADAPTED TO QUICK EXPLOITATION IN A TENSE CRISIS SITUATION.

4. IF THE PREFERRED SOLUTION SHOULD BE TO KEEP KY LAWFULLY IN POWER ~~XXXXXXXXXXXXXXXXXXXX~~ UNTIL NEW ELECTIONS COULD BE ORGANIZED AND HELD, ARTICLE 65 STRIKES US AS A MUCH MORE PROFITABLE VEIN TO MINE THAN ARTICLE 64. ~~XXXX~~ IT EXPLICITLY DEALS WITH EXTENDING ~~XM~~ TERMS OF OFFICE. ITS DRAFTERS ALMOST CERTAINLY NEVER ~~XXXX~~ INTENDED THEIR PHRASE QUOTE ELECTED BODIES UNQUOTE TO ENCOMPASS THE PRESIDENCY, BUT THIS IS A MATTER THAT COULD BE SPEEDILY RESOLVED BY A SUPREME COURT RULING. SINCE SOUTH VIETNAM IS CLEARLY IN A STATE OF WAR AND SINCE NEW ELECTIONS CLEARLY CANNOT BE ORGANIZED, HENCE HELD, ~~XX~~ BEFORE 31 OCTOBER, BOTH MAJOR CONDITIONS FOR THE CONSTITUTIONAL APPLICATION OF ARTICLE 65 WOULD DEMONSTRABLY EXIST IF THIEU WERE ASSASSINATED BEFORE HIS CURRENT TERMS EXPIRES.

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5. IF THE ABOVE SOLUTION SHOULD BE ADOPTED, ITS EXECUTION WOULD BE RELATIVELY SIMPLE, WOULD REQUIRE NO CONSTITUTIONAL AMENDMENT, AND AT LEAST IN THEORY COULD BE QUICKLY EFFECTED. THREE STEPS WOULD BE REQUIRED. (1) A SUPREME COURT DETERMINATION THAT THE OFFICE OF THE PRESIDENCY FELL WITHIN THE AMBIT OF ARTICLE 65 AS A QUOTE ELECTED BODY UNQUOTE. (2) A PROCLAMATION BY KY EXTENDING HIS TERM OF OFFICE FOR A SET TIME WITHIN WHICH NEW ELECTIONS WOULD BE ORGANIZED AND HELD. (3) A TWO-THIRDS VOTE OF THE NATIONAL ASSEMBLY APPROVING OR ENDORSING SUCH A PROCLAMATION. SUCH A PROCEDURE WOULD ALSO LEGALLY FINESSE HUONG'S TITLE TO AUTHORITY AS OF 1201 ON 31 OCTOBER, A TITLE THAT AN AILING HUONG WITHOUT MILITARY ~~KXKXN~~ BACKING WOULD BE ILL POSITIONED TO PRESS IN ANY EVENT.

6. WE WILL KEEP YOU POSTED ON WASHINGTON REACTION TO OR DISCUSSION OF AMBASSADOR'S MESSAGE MENTIONED PARA 1 REF.

END OF MESSAGE

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